

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

IN THE MATTER OF)
)
THE EXTRADITION OF) Misc. No. 11- 804\)
)
MANUEL ALBERT SOARES)

COMPLAINT
(18 U.S.C. §3184)

I, the undersigned Assistant United States Attorney, being duly sworn, state on information and belief that the following is true and correct:

1. in this matter I act for and on behalf of the Government of Portugal;
2. there is an extradition treaty in force between the United States and Portugal of May 7, 1908, which entered into force on November 14, 1908;
3. pursuant to the treaty, the Government of Portugal has submitted a formal request through diplomatic channels for the extradition of Manuel Albert Soares;
4. on October 16, 2008, Manuel Albert Soares was sentenced to a custodial jail term of four years and six months for attempted aggravated homicide, contrary to sections 22 (1) and (2) c), 23, 26, 131 and 132(1) of the Portuguese Criminal Code, committed within the jurisdiction of the requesting state, and on March 24, 2009, an international arrest warrant was issued by Dr. Manuela Trocado (Judge), at Rua de Sao Joao Novo, 29, Portugal;
5. the arrest warrant was issued on the basis of the following facts: Manuel Albert Soares was married to Maria Teresa Franqueira Mourao until September 1999. Although the marriage ended, the two still shared a business in Portugal. However, in 2004, Soares was fired from the business. In May 2006, Soares solicited two individuals to kill his ex-wife. The individuals

notified the police about Soares' solicitation, and agreed to work with the police by continuing to engage in discussions with Soares about the murder for hire. The individuals engaged in numerous phone calls with Soares, and received written instructions from Soares about how the murder of his ex-wife was to be carried out. Soares also paid 5,000 euros to the individuals, which represented half of the fee for the murder. Soares was charged with attempted aggravated murder and was present at the trial on such charges. On September 7, 2007, the criminal court handed down a judgment which acquitted Soares of the charges on legal grounds. The Prosecution appealed this judgment to the Portuguese Supreme Court of Justice, which on October 16, 2008, revoked the lower court's acquittal and sentenced Soares to a custodial sentence of four years and six months;

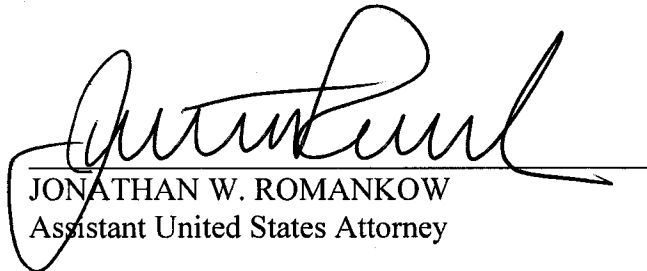
6. Manuel Albert Soares may be found within the jurisdiction of this court at the Union County Jail, Elizabeth, New Jersey.

7. Kenneth R. Propp, an attorney in the Office of the Legal Adviser of the United States Department of State, has provided the Department of Justice with a declaration authenticating a copy of the diplomatic note by which the request for extradition was made and a copy of the extradition treaty between the United States and Portugal, stating that the offenses for which extradition is demanded are covered by the treaty, and confirming that the documents supporting the request for extradition are properly certified by the principal American diplomatic or consular officer in Portugal, in accordance with Title 18, United States Code, Section 3190, so as to enable them to be received in evidence; and

8. the declaration from the Department of State with its attachments, including a copy of the diplomatic note from the requesting state, a copy of the relevant extradition treaty, and the certified documents submitted in support of the request, (marked collectively as Government's

Exhibit A) are filed with this complaint and incorporated by reference herein.

WHEREFORE, the undersigned requests that a warrant for the arrest of the aforementioned person be issued in accordance with the Extradition Treaty between the United States and Portugal, and Title 18, United States Code, Section 3184, so that the fugitive may be arrested and brought before this court, "to the end that the evidence of criminality may be heard and considered."



JONATHAN W. ROMANKOW
Assistant United States Attorney

Sworn to before me and subscribed in my presence this 12th day of April, 2011, at Newark, New Jersey.



HONORABLE MADELINE COX ARLEO
United States Magistrate Judge

DISTRICT OF COLUMBIA, ss:

DECLARATION OF KENNETH R. PROPP

I, Kenneth R. Propp, declare and say as follows:

1. I am an Attorney Adviser in the Office of the Legal Adviser for the Department of State, Washington, D.C. This office has responsibility for extradition requests, and I am charged with the extradition case of Manuel Albert Soares. I make the following statements based upon my personal knowledge and upon information made available to me in the performance of my official duties.

2. In accordance with the provisions of the extradition treaty in full force and effect between the United States and Portugal, the Embassy of Portugal has submitted a diplomatic note dated January 27, 2010 formally requesting the extradition of Manuel Albert Soares. A copy of the diplomatic note is attached to this declaration.

3. The relevant and applicable treaty provisions in full force and effect between the United States and Portugal are found in the Extradition Treaty between the United States of America and Portugal of May 7, 1908, which entered into force on November 14, 1908 (TS 512). A copy of the Treaty is attached to this declaration.

4. In accordance with Article XIII of the Treaty, the Government of the United States provides legal representation in United States courts for Portugal in its extradition requests, and Portugal provides legal representation in its courts for extradition requests made by the United States.

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5. The offense for which extradition is sought is covered by Article II of the Treaty.

6. The documents submitted by the Embassy of Portugal in support of its extradition request were certified on January 4, 2010, by Eugene P. Sweeney, Chargé d'affaires a.i., for the United States Embassy in Lisbon, in accordance with Title 18, United States Code, Section 3190. Mr. Sweeney, at the time of his certification, was the principal diplomatic officer of the United States in Portugal.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on February 1, 2010.



KENNETH R. PROPP

Attachments:

1. Copy of note
2. Copy of treaty



Diplomatic Note 37 (amended)
01.27.2010

The Embassy of Portugal in Washington presents its compliments to the U.S. Department of State and, under the terms of the Convention on Extradition between the Government of the United States of America and the Government of Portugal, signed on 7th May 1908, has the honor to submit a request of extradition regarding the Portuguese national, **Manuel Albert Soares**, born on 24th March 1956 in Newark, New Jersey, in the United States of America.

According to the abovementioned request, **Manuel Albert Soares** was sentenced to 4 years and 6 months of imprisonment for an offence of aggravated attempted homicide punishable in accordance with section 22 (1) and (2) c), 23, 26, 131 and 132 (1) of the Portuguese Criminal Code.

The Embassy of Portugal in Washington avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

A handwritten signature, likely of Ms. Michel Guilani, consisting of a stylized 'M' and 'G'.

Ms. Michel Guilani
U.S. Department of State
L-LEI HST 5419
2201 C Stree



EXTRADITION

Convention and exchange of notes signed at Washington May 7, 1908

Senate advice and consent to ratification May 22, 1908

Ratified by Portugal September 21, 1908

Ratified by the President of the United States October 26, 1908

Ratifications exchanged at Washington November 14, 1908

Entered into force November 14, 1908

Proclaimed by the President of the United States December 14, 1908

35 Stat. 2071 ; Treaty Series 512

CONVENTION

The United States of America and His Most Faithful Majesty the King of Portugal and of the Algarves, having judged it expedient, with a view to the better administration of justice and to the prevention of crimes within their respective territories and jurisdictions, that persons convicted of or charged with the crimes hereinafter specified, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State; and

His Most Faithful Majesty the King of Portugal and of the Algarves, Viscount de Alte, His Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States of America;

Who, after reciprocal communication of their full powers, found in good and due form, have agreed upon the following articles, to wit:

ARTICLE I

It is agreed that the Government of the United States of America and the Government of His Most Faithful Majesty the King of Portugal and of the Algarves shall, upon mutual requisition duly made as herein provided, deliver up to justice any person who may be charged with or may have been convicted of any of the crimes specified in Article II of this Convention committed within the jurisdiction of one of the Contracting Parties while said person was

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actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other, provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed.

ARTICLE II

Persons shall be delivered up according to the provisions of this Convention, who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, manslaughter, when voluntary; poisoning or infanticide.
2. The attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve years.
4. Bigamy.
5. Arson.
6. Willful and unlawful destruction or obstruction of railroads, which endangers human life.
7. Crimes committed at sea:
 - (a) Piracy, as commonly known and defined by the law of Nations, or by Statute.
 - (b) Wrongfully sinking or destroying a vessel at sea or attempting to do so.
 - (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel.
 - (d) Assault on board ships upon the high seas with intent to do bodily harm.
8. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.
9. The act of breaking into and entering the offices of the Government and public authorities, or the offices of banks, banking houses, saving banks, trust companies, insurance companies, or other buildings not dwellings with intent to commit a felony therein.
10. Robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or by putting him in fear.
11. Forgery or the utterance of forged papers.
12. The forging or falsification of the official acts of the Government or public authority, including Courts of Justice, or the uttering or fraudulent use of any of the same.

13. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by National, State, Provincial, Territorial, Local or Municipal Governments, banknotes or other instruments of public credit, counterfeit seals, stamps, dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.

14. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars or the equivalent in Portuguese currency.

15. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars or the equivalent in Portuguese currency.

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or their families, or for any other unlawful end.

17. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or the equivalent in Portuguese currency.

18. Obtaining money, valuable securities or other property by false pretences or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars or the equivalent in Portuguese currency.

19. Perjury or subornation of perjury.

20. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any company or corporation, or by anyone in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars or the equivalent in Portuguese currency.

21. Crimes and offences against the laws of both countries for the suppression of slavery and slave trading.

22. The extradition is also to take place for the participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both Contracting Parties.

ARTICLE III

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences; and no person surrendered by or to either of the Contracting Parties in virtue of this Convention shall be tried or punished for a

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political crime or offence. When the offence charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offence was committed or attempted against the life of the Sovereign or Head of a foreign State or against the life of any member of his family, shall not be deemed sufficient to sustain that such a crime or offence was of a political character, or was an act connected with crimes or offences of a political character.

ARTICLE IV

No person shall be tried for any crime or offence other than that for which he was surrendered.

ARTICLE V

A fugitive, accused or criminal, shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.

ARTICLE VI

If a fugitive, accused or criminal, whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive, accused or criminal, claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that State whose demand is first received.

ARTICLE VIII

Under the stipulations of this Convention, neither of the Contracting Parties shall be bound to deliver up its own citizens or subjects.

ARTICLE IX

The expense of the arrest, detention, examination and transportation of the accused or criminal shall be paid by the Government which has preferred the demand for extradition.

ARTICLE X

Everything found in the possession of the fugitive, accused or criminal, at the time of his arrest, whether being the proceeds of the crime or offence,

or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the Contracting Parties, be delivered up with his person at the time of the surrender. Nevertheless, the rights of a third party with regard to the articles aforesaid shall be duly respected.

ARTICLE XI

The stipulations of this Convention shall be applicable to all territory wherever situated, belonging to either of the Contracting Parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective Diplomatic Agents of the Contracting Parties. In the event of the absence of such Agents from the country or its seat of Government, or where extradition is sought from a colonial possession of Portugal or from territory, included in the preceding paragraph, other than the United States, requisition may be made by superior Consular officers.

It shall be competent for such Diplomatic or superior Consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two Governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII

If when a person accused shall have been arrested in virtue of the mandate or preliminary warrant of arrest, issued by the competent authority as provided in Article XI hereof, and been brought before a judge or a magistrate to the end that the evidence of his or her guilt may be heard and examined as hereinbefore provided, it shall appear that the mandate or

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preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the Government asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding two months, so that the demanding Government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused, and if at the expiration of the said period of two months such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released, provided that the examination of the charges preferred against such accused person shall not be actually going on.

ARTICLE XIII

In every case of a request made by either of the two Contracting Parties for the arrest, detention or extradition of fugitives, criminal or accused, the legal officers or fiscal ministry of the country where the proceedings of extradition are had shall assist the officers of the Government demanding the extradition before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the Government demanding the extradition, provided, however, that any officer or officers of the surrendering Government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the Government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XIV

This Convention shall take effect from the day of the exchange of the ratifications thereof; but either Contracting Party may at any time terminate the same on giving to the other six months' notice of its intention to do so.

The ratifications of the present convention shall be exchanged at Washington as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the above articles, and have hereunto affixed their seals.

Done in duplicate at the city of Washington, this 7th day of May, one thousand nine hundred and eight.

ELIHU ROOT	[SEAL]
ALTE	[SEAL]

EXCHANGE OF NOTES

The Portuguese Minister to the Secretary of State

[TRANSLATION]

The undersigned Envoy Extraordinary and Minister Plenipotentiary of His Most Faithful Majesty the King of Portugal and the Algarves has the honor to inform the Secretary of State of the United States that he has been instructed by His Excellency the Minister for Foreign Affairs of Portugal to place on record on behalf of the Portuguese Government, with reference to the Extradition Treaty which the Secretary of State and the undersigned have just signed, its understanding that the Government of the United States assures that the death penalty will not be enforced against criminals delivered by Portugal to the United States for any of the crimes enumerated in the said treaty, and that such assurance is, in effect, to form part of the treaty and will be so mentioned in the ratifications of the treaty.

VISCONDE D'ALTE

WASHINGTON, May 7, 1908

His Excellency ELIHU ROOT
*Secretary of State of the United
 States of America
 etc., etc., etc.*

The Secretary of State to the Portuguese Minister

WASHINGTON, May 7, 1908

In signing to-day with the Envoy Extraordinary and Minister Plenipotentiary of His Most Faithful Majesty the King of Portugal and of the Algarves the extradition treaty which was negotiated between the Government of the United States and that of Portugal, the undersigned Secretary of State has the honor to acknowledge and to take cognizance of the Minister's note of this day's date stating that he has been instructed by His Excellency the Minister for Foreign Affairs of Portugal to place on record, on behalf of the Portuguese Government, its understanding that the Government of the United States assures that the death penalty will not be enforced against criminals delivered by Portugal to the United States for any of the crimes enumerated in the said treaty, and that such assurance is, in effect, to form part of the treaty and will be so mentioned in the ratifications of the treaty.

In order to make this assurance in the most effective manner possible, it is agreed by the United States that no person charged with crime shall be extraditable from Portugal upon whom the death penalty can be inflicted for

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the offense charged by the laws of the jurisdiction in which the charge is pending.

This agreement on the part of the United States will be mentioned in the ratifications of the treaty and will in effect form part of the treaty.

ELIHU ROOT

Visconde DE ALTE
Minister of Portugal

U.S. Department of State

**CERTIFICATE TO BE ATTACHED TO DOCUMENTARY
EVIDENCE ACCOMPANYING REQUISITIONS IN
THE UNITED STATES FOR EXTRADITION
AMERICAN FOREIGN SERVICE**

01-04-2010
Place and Date (mm-dd-yyyy)

Eugene P. Sweeney, Charge D'Affaires a.i.
Name Title

of the United States of America at Lisbon, Portugal

hereby certify that the annexed papers, being the supporting documents

presented to be used upon an application for the extradition from the United States of America
of the National (US and Portuguese) Manuel Albert Soares, DPOB 03/24/56, Porto, Portugal

charged with the crime of aggravated attempted homicide

alleged to have been committed in Portugal

are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by
the authorities of Portugal

as required by Title 18, United States Code, Section 3190.

whereof I hereunto sign my name and cause my seal of office to be affixed

the fourth day of January, 2010
Month and Year


Signature

Eugene P. Sweeney, Charge D'Affaires a.i.

Type Name and Title of Certifying Officer
of the United States of America.

PROCURADORIA-GERAL DA REPÚBLICA

Certified true copies

Request to the USA

for the Extradition

of

Manuel Albert Soares

to Portugal

Inventory of Documents

- Certificate signed by the Translator
- 1. International Arrest Warrant in English and Portuguese
- 2. Personal data of Manuel Albert Soares – folios 1666-1667 (in PT) + photos (folios 1668-1669) + Display Tenprint (fingerprints) – 2 pp. + Translation of personal data (EN – 2 pp.)
- 3. Affidavit + Translation of the Supreme Court Sentence (folios 1314-1339) EN – 27 pp.
Affidavit (PT) + Sentence of the 1st instance Court (4.^a Vara Criminal do Círculo do Porto) – PT (pp. 1-36)
Supreme Court Sentence (PT) (folios 1314-1339)
- 4. Portuguese Criminal Code (EN + PT) – provisions on the relevant offences.

Lisbon, October 15, 2009

Prosecutor General's Office

PROCURADORIA-GERAL DA REPÚBLICA


CERTIFICATE

I, Eva BACELAR, Senior Translator at the Prosecutor General's Office, hereby declare that I understand the English language and that I hold the necessary qualifications to be a professional Translator. In that context, I have translated, to the best of my knowledge and belief, the annexed papers, being the supporting documents to be used in the request for extradition from the United States of America of the Portuguese/American citizen Manuel Albert Soares.

For that purpose, all attached translations bear my signature and, in addition, my capacity as a Translator of this Office is certified and confirmed by the official seal of the Prosecutor General's Office in Lisbon. All original documents and photocopies in Portuguese are also legally authenticated with the same seal, as certified true documents of the same files.

In witness whereof I hereunto sign my name and initial the translated documents.

Lisbon, October 15, 2009.

A handwritten signature in black ink, reading "Eva Bacelar" followed by a horizontal line.

Eva Bacelar
Translator - Prosecutor General's Office



Varas Criminais do Porto

4ª Vara

Rua de São João Novo, 29
P - 4099-011 Porto
Telef: 222092310 Fax 222088521
porto.varcrl2@tribunais.org.pt

**Oporto Chambers with Criminal Jurisdiction
4th Chamber with Criminal Jurisdiction
Portugal**

TRANSLATION

**Original in
Portuguese**

PGR: Proc.º 855/2009 L.º CIMP

Received: 3.8.09

Translated: 6.8.09

Final version: 15.10.09

Case n.º 713/06.3JAPRT	Ordinary procedure (Three-Judge Court)	Our reference: 1018084
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INTERNATIONAL ARREST WARRANT

IN THE INTEREST OF JUSTICE AND UNDER THE LEGAL PROVISIONS ON
INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS,

I request that the person mentioned below be arrested and surrendered for the purposes
of conducting a criminal prosecution or **executing a custodial sentence** or
detention order.

(a) Information regarding the identity of the requested person:

Name: **Soares**
Forename(s): **Manuel Albert**
Maiden name, where applicable: **Does not apply**
Aliases, where applicable:
Sex: **Male**
Place of birth/Nationality: **Portuguese and American**
Date of birth: **24-03-1956**
Residence and/or known address in Portugal: **R. Nossa Senhora da Consolação L4
- Nogueiró, Braga (Portugal)**
Residence and/or known address in the USA: **103, Polk Street, Newark, New
Jersey 07105, United States of America**

Translated and signed at the Prosecutor General's Office – Lisbon
by Eva Bacelar (Assessora Principal) - 15-10-2009

Eva Bacelar



Varas Criminais do Porto

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P - 4099-011 Porto

Telef: 222092310 Fax 222088521

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Language(s) which the requested person understands (if known):

Distinctive marks/description of the requested person:

Photo and fingerprints of the requested person, if they are available and can be transmitted or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included).

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type: **Court Decision (Ruling)**

2. Enforceable judgment: of **16 October 2008 – Decision of the Portuguese Supreme Court of Justice**

Effective custodial sentence to be served: **4 years, 6 months and 0 days in prison.**

Enforceable judgment (res judicata) since: 3-11-2008

In ordinary procedure (three-judge Court) of the 4th Chamber with criminal jurisdiction of Porto (Portugal) and by Judgement handed down on 9/07/2007, the requested person was acquitted of a crime of aggravated attempted homicide contrary to Articles 22, 23, 73, 131 and 132, paragraphs 1 and 2, subparagraphs d) and i) of the Portuguese Criminal Code, of which he had been charged.

The Prosecution appealed against the Judgement and the appeal was found admissible. The appealed decision was revoked and **Manuel Albert Soares** was convicted to a custodial penalty of 4 (four) years and 6 (six) months, as mediate perpetrator in the attempted form for a crime of aggravated homicide contrary to the joint provisions of Articles 22, par. 1.2 c), 23, 26, 131 and 132 par. 1 of the Portuguese Criminal Code. The crime was perpetrated on 15 May 2006.

Translated and signed at the Prosecutor General's Office – Lisbon
by Eva Bacelar (Assessora Principal) - 15-10-2009



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(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
2. Length of the custodial sentence or detention order imposed: **4 (four) years and 6 (six) months imprisonment.**

Remaining sentence to be served: **4 (four) years and 6 (six) months.**

(d) Offence(s) and summary of facts:

This warrant relates to in total: **.1 offence.**

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person –

Mr. Manuel Albert Soares (convict) and Mrs. Maria Teresa Franqueira Mourão (victim and private prosecutor) are married.

- Their marriage gradually deteriorated and in September 1999 they eventually broke up.
- Although the marriage was over, the couple still shared the family house at R. Nossa Senhora da Consolação, 314 - Nogueiró, Braga (Portugal).
- Mr. Soares was still a partner of his ex-wife at the firm *Braburger – Hotel Management*, of which she was a partner and manager. In that quality, she was responsible for different bank transactions on Internet.
- Some time around 2004, Mr. Soares was fired from the company because he had stolen money from the firm and had a great number of unjustified absences from work.
- Mr. Soares then planned in great detail the murder of his wife and required third parties to perpetrate the murder.
- For that purpose, he decided to hire one or two persons who would be able to achieve his plan against the payment of an amount of money to be settled. All details of the murder – in particular the method, the venue and date – would be arranged and decided by Mr. Soares.
- Therefore, Mr. Soares made a phone call to the firm *TROIKA*, in Porto, located at Rua do

Translated and signed at the Prosecutor General's Office – Lisbon

by Eva Bacelar (Assessora Principal) - 15-10-2009



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Almada, 314 – Porto, and said that he needed someone *to look after a person*. Mr. Alexandr Zubov, employee of that firm, suggested him to personally visit the firm, which he refused, arguing that he would rather send a letter.

- On an undetermined date, Mr. Soares sent a letter written in Russian, addressed to "Mr. Yuri, Russinter". The letter was written in inconsistent sentences that made no sense and could not be understood.

Later, Mr. Soares sent another letter written in Portuguese, explaining that he needed someone to *"take care of a person"*, meaning to kill "a person" who lived in Braga and who had children.

He determined the time and venue for the crime.

He decided on the weapon to be used: *a fire arm*

He decided on the date of the crime: *9 June "the precise date"*

He set the rules.

- Later on, Mr. Soares contacted Alexandr Zubov again and asked whether they had received his letter, which Alexandr Zubov confirmed.

After receiving the letter from Soares, Mr. Alexandr Zubov contacted his colleague Sergey Pyrada and they both decided to hand the letter to the Judiciary Police. The Police Agents told them to go on answering Mr. Soares' phone calls and making believe they "played his game", while the Judiciary Police took care of the operations and controlled all phone calls made by Mr. Soares to Mr. Alexandr Zubov.

- Mr. Soares prepared his criminal plan and handed bank notes issued by the Bank of Portugal in order to pay half the price that had been arranged for the crime. However, he did not achieve his plan for reasons out of his own control.

- Mr. Soares acted willfully and knowingly, while he was fully aware that his conduct was punishable and forbidden.

Nature and legal classification of the offence(s) and the applicable statutory provision/code: 1 crime of aggravated attempted homicide in violation of sections 22, par. 1.2 c), 23, 26, 131 and 132 par. 1 of the Portuguese Criminal Code, committed on 15 May 2006.

(e) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

Translated and signed at the Prosecutor General's Office – Lisbon
by Eva Bacelar (Assessora Principal) - 15-10-2009



Varas Criminais do Porto
2ª Vara
 Rua de São João Novo, 29
 P - 4099-011 Porto
 Telef: 222092310 Fax 222088521
 porto.varcr12@tribunais.org.pt

(f) The judicial authority which issued the warrant:

Official name: **Varas Criminais do Porto (Porto Chambers with Criminal Jurisdiction) ...**

Name of its representative: **Dr.ª Manuela Trocado**

Post held (title/grade): **Judge**

File reference: **Ordinary procedure (three-judge Court) n.º 713/06.3JAPRT**

Address: **Rua de São João Novo, 29 – Porto (Portugal)**

Tel. No.: (country code) (area/city code) **+351 222 092 310**

Fax No. (country code) (area/city code) **+351 222 088 521**

E-mail **porto.varcr12@tribunais.org.pt**

Contact details of the person to contact to make necessary practical arrangements for the surrender:

Central authority responsible for the transmission and administrative reception of International Arrest Warrants:

Name of the central authority: **PROCURADORIA-GERAL DA REPÚBLICA (Prosecutor General's Office in Lisbon, Portugal)**

Contact person, if applicable (title/grade and name):

Address: **Rua da Escola Politécnica, n.º 140 – 1260-269 LISBOA, Portugal**

Tel. No.: (country code) (area/city code) **(351) 21 390 19 00**

Fax No.: (country code) (area/city code) **(351) 21 397 52 55**

E-mail: **mailpgr@pgr.pt**

Translated and signed at the Prosecutor General's Office – Lisbon
 by Eva Bacelar (Assessora Principal) - 15-10-2009



Varas Criminais do Porto

2ª Vara

Rua de São João Novo, 29
P - 4099-011 Porto
Telef: 222092310 Fax 222088521
porto.varcr12@tribunais.org.pt

Signature of the issuing judicial authority and/or its representative: **signed by Dr.ª Manuela Trocado (Judge)**

Name: **Dr.ª Manuela Trocado**

Post held (title/grade): **Judge**

Date: **24 March 2009**

Official stamp (if available) – **Stamp of the Court**

Translated and signed at the Prosecutor General's Office – Lisbon
by Eva Bacelar (Assessora Principal) - 15-10-2009



Polícia Judiciária

Ficha Biográfica

Nome: **MANUEL ALBERT SOARES**

Identificação			
Nome	MANUEL RIBAS SOARES		
Nome da Mãe	ROSA CORTEZ ENES		
Data de Nascimento	24/03/1956	Nacionalidade	Portugal
Naturalidade	- * * * Estados Unidos da América		

Obito			
Data			
Nº Ass. Obito		Conserv. Obito	
Nº Ass. Nascimento		Conserv. Nascimento	

Sinaletica			
Sexo	Masculino	C.I.	Branco
Altura	174	Cor Olhos	Azuis
Sinais Particulares			

Outros Dados	
Doc. Identificação	Passaporte G625474
Estado Civil	Casado
Profissão	Engenheiro mecânico
Morada	- 103 Polk Street 07105, , Newark/New Jersey * * * Estados Unidos da América * 27/02/2009

Dados Policiais	
Classificação Policial	Homicida
Cliché	39403 Directoria do Norte
Reserva	25064 Directoria do Norte
Nº de Rachos	
Situação Prisional	Prisão preventiva * 28/06/2006 * 22/09/2006 * * TRIBUNAL DE INSTRUÇÃO CRIMINAL DO PORTO 1º JUÍZO B * 000713/06.3JAPRT * Homicídio /Tentativa * Detido * 27/06/2006 * 28/06/2006 * * DIRECTORIA DO NORTE * 000713/06.3JAPRT * Homicídio /Tentativa *

Anotações	

Dados Alternativos	
Nome	
Alcunhas	
País	
Mães	ROSA ENES SOARES * Falso
Datas Nasc.	
Naturalidades	

1667

Nacionalidades	
Doc. Ident.	Passaporte Z7748131 // Bilhete de Identidade 12297179
Profissões	
Moradas	Rua Nossa Senhora da Consolação, 14, , Braga * Nogueiró * Braga * Braga * Portugal * 20/06/2006

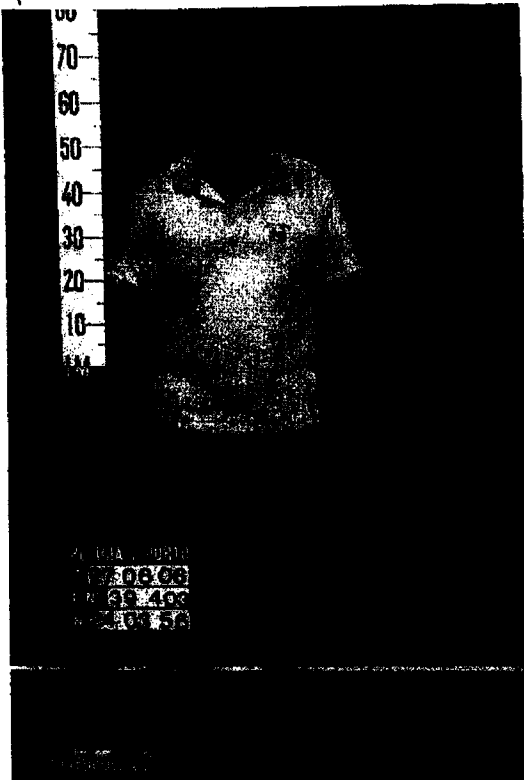
Inquéritos

NUIPC	000713/06.31APRT	Estado	Finalizada
Departamento	Directoria do Norte	Destino	* Saldo para acusar * 23/02/2007 * DIAP PORTO
Infração Principal	Homicídio /Tentativa		
Arguidos	MANUEL ALBERT SOARES		

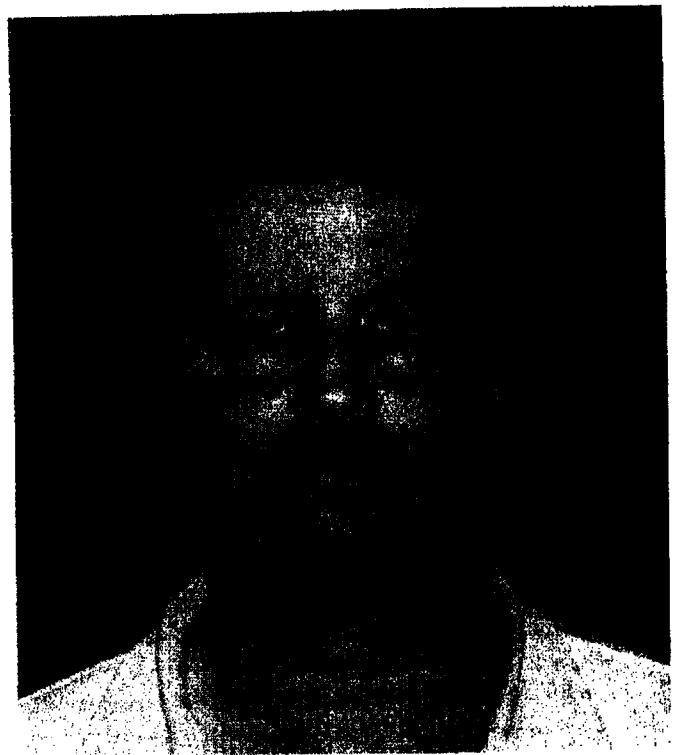
Pedidos de Procura Activos

AI - 2680004

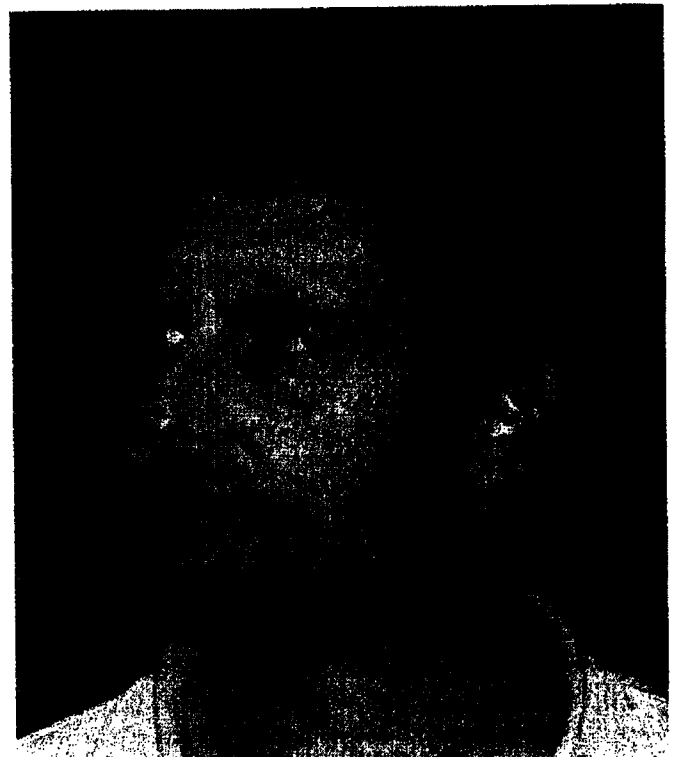
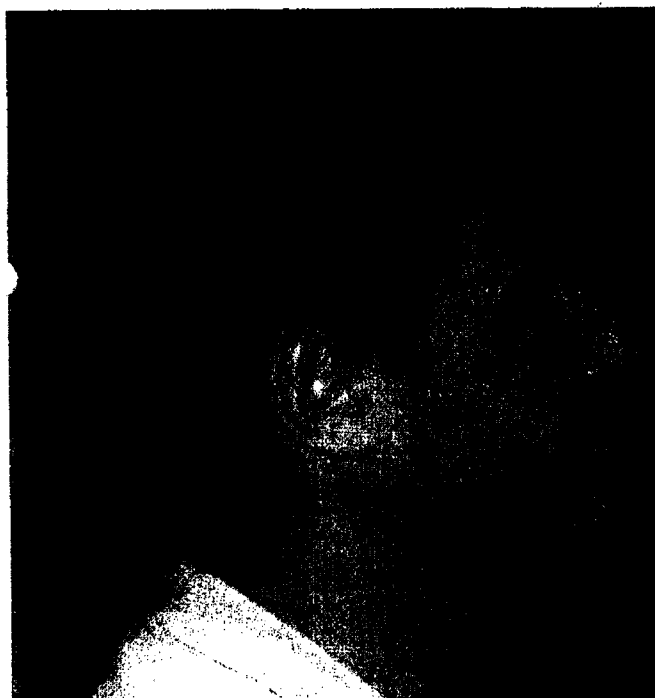
Tipo de Pedido	Detenção	Data do Pedido	05/02/2009
Infração			
Data de Validade		Pena	Prisão efectiva - 4 anos e 6 meses
Reinício		Causa	
Departamento	DIC de Braga		
Correspondência			
Tipo de Correspondência	Mandado de detenção	Data de Emissão	30/01/2009
Nº	985605	Ref./NUIPC	713/06.31APRT
Entidade Origin	4ª VARA CRIMINAL DO CIRCULO DO PORTO		
Entidade Destino	DEPARTAMENTO DE INVESTIGAÇÃO CRIMINAL DE BRAGA		
Assunto			
Observações			

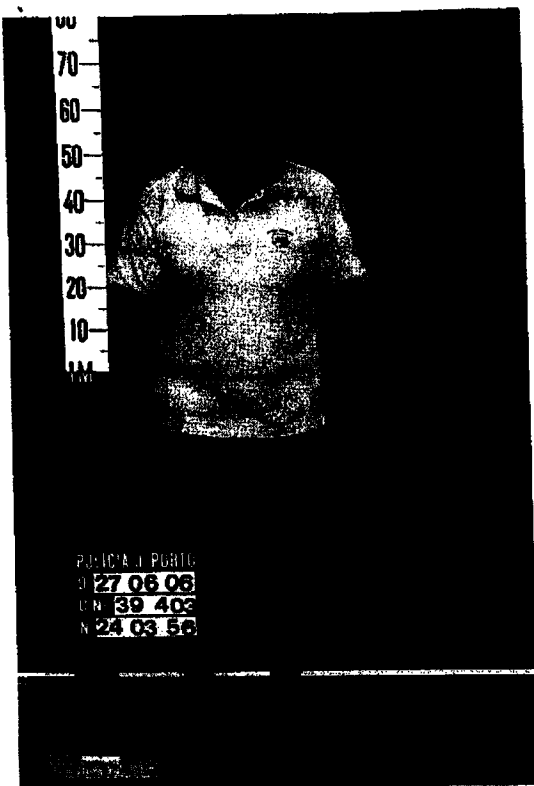


MANUEL ALBERT SOARES

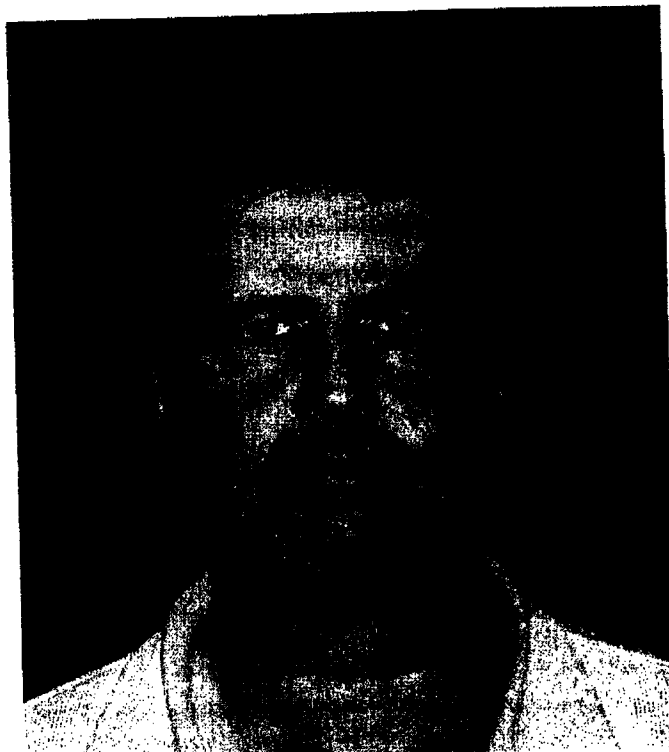


B° 05400309

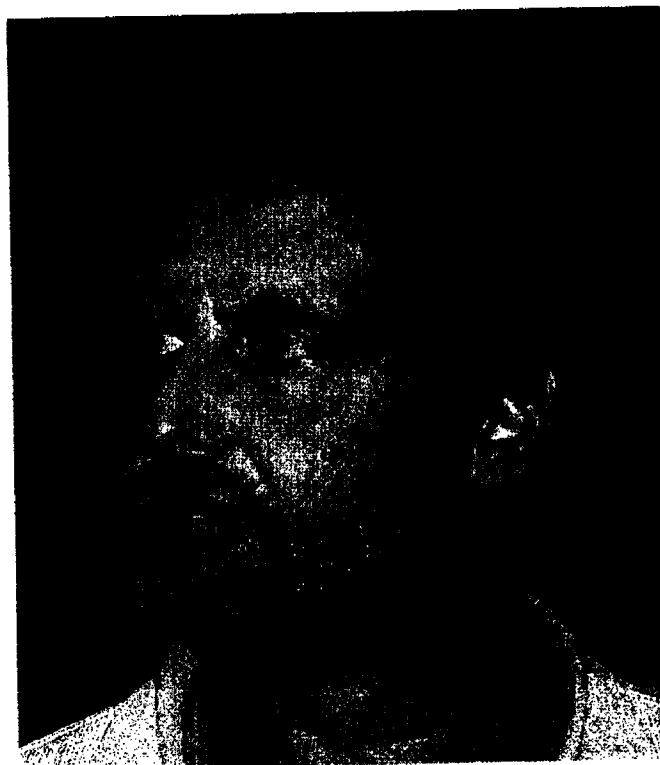
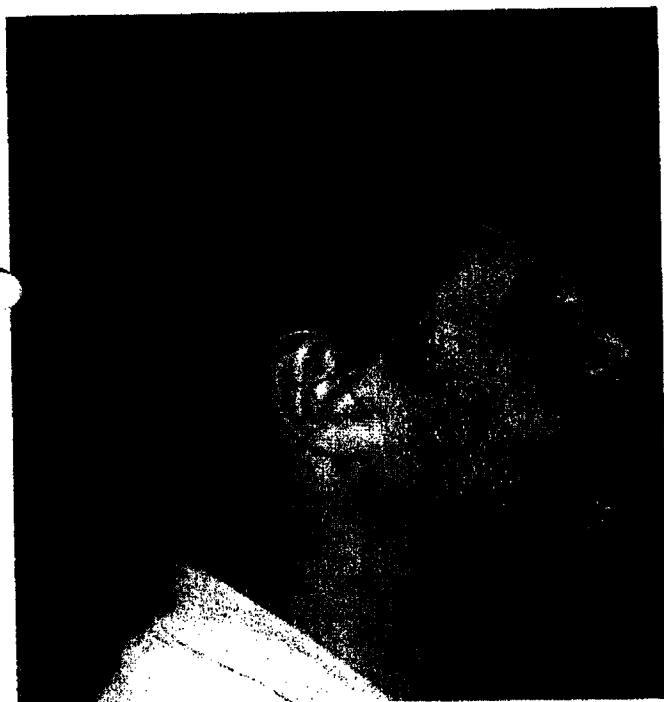




MANUEL ALBERT SOARES



B° 05400309



NOTE: MINUTE RECORD

1670

PRINT to Reseach u: 25.064/D.in Monte, P.J.

Start
Web Browser

Search
Print Card
Move Record

Display Tenprint

Fingerprints

Id: 200054003091

Palmprints

Swap




Transaction Data

Descriptors

Mugshots

Signatures

Display Minutes

Quality: B	Quality: P	Quality: P	Quality: C
 <p># Minutia: 264</p>	 <p># Minutia: 1207</p>		 <p># Minutia: 267</p>

Cancel

Process Selected Image

Save and Exit

2007.07.01 15:27

2:45

2007.07.01 15:27

4. If start ☐ Web Browser

 Search

Print Card

Move Record

Fingerprints | **Palprints**

Transaction Data	Description
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Mugshots

Signatures:

COLOMBINI

2:48:47 PM

2

Cancel

Process Selected Image

Save and Exit

2008年12月



Judiciary Police

Biographical Data

Name: MANUEL ALBERT SOARES

TRANSLATION (Original: Portuguese)

Identification			
Father	Manuel Ribas Soares		
Mother	Rosa Cortez Enes		
Date of Birth	24/03/1956	Nationality	Portugal
Place of Birth	**** United States of America		

Death			
Date			
Death certificate n.º		Register Office - Death	
Birth certificate n.º		Register Office - Birth	

Identification			
Sex	Male	Race	White
Height	174	Eyes colour	Blue
Distinguish marks			

Other data	
Doc. Identification	Passport G625474
Marital status	Married
Occupation	Mechanical Engineer
Address	103 Polk Street 07105, Newark/New Jersey **** United States of America * 27/02/2009

Data base	
Classifications	Murder
Cliché	39403 Directoria do Norte
Summary	25064 Directoria do Norte
Detainee No.	
Situation in Prison	remand in custody * 28/06/2006 * 22/09/2006 ** Tribunal de Instrução Criminal do Porto 1º Juízo B * 000713/06.3JAPRT * Murder/Attempt Detained * 27/06/2006 * 28/06/2006 ** Directoria do Norte * 000713/06.3JAPRT * Attempted murder *

Annotations	
-------------	--

Alternative data	
Names	
Alias	
Father's	
Mother's	Rosa Enes Soares * False
Dates of birth	
Places of birth	

Nationalities	
Ident. doc	Passport Z7748131 // identity card 12297179
Occupations	
Addresses	Rua Nossa Senhora da Consolação, 14, Braga* Nogueiró * Braga * Braga * Portugal * 26/06/2006

INQUIRIES

NUIPC	000713/06.3JAPRT	State of the procedure	Finished
Division	Directoria do Norte	Destination	* delivered to the Prosecutor for accusation * 23/02/2007 * DIAP Porto
Main offence	Attempted murder		
Defendants	MANUEL ALBERT SOARES		

ACTIFS SEARCH REQUEST

AI - 2680004

Type of request	Detention	Date of the request	05/02/2009
Offence			
Date of validity		Sentence	Prison term - 4 years and 6 months
Redeemable		Bail	
Division	DIC de Braga		
Courier			
Type of courier	Arrest Warrant	Date of issue	30/01/2009
No.	985605	Ref./NUIPC	713/06.3JAPRT
From	4ª Vara Criminal do Circulo do Porto		
To	Departamento de Investigação Criminal de Braga		
Subject			
Comments			

PROCURADORIA-GERAL DA REPÚBLICA

TRANSLATION

**Original In
Portuguese**

Proc.º 855/2009 – L.º CIMP

Received: 3 August 09

Translated: 6-11 August 09

Varas Criminais do Porto
4.ª Vara
Oporto Chambers with Criminal Jurisdiction
4th Chamber with Criminal Jurisdiction
Portugal

Case n.º 713/06.3JAPRT	Ordinary procedure (Three-Judge Court)	Our reference: 1042270
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AFFIDAVIT

I, Arminda Borges, Assistant Clerk at the 4th Chamber – Chambers with Criminal Jurisdiction in Porto, Portugal,

CERTIFY that this Court has led a case (ordinary procedure - three-judge Court) registered as n.º 713/06.3JAPRT,

Directed by: the Public Prosecutor
Against: **Mr. Manuel Albert SOARES.**

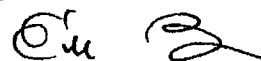
Pursuant to section 387 (1) of the Civil Code, I certify that the photocopies that follow, duly numbered, signed and certified by the official seal of this Court, are true copies of the original documents inserted in the files.

I ALSO CERTIFY that the said Judgement is enforceable (res judicata) as regards each convict since:

Convict: **Manuel Albert SOARES**, since: 3-11-2008.

Porto, 29 April 2009.

The Assistant Clerk – signature over official seal: Arminda Borges.



PROCURADORIA-GERAL DA REPÚBLICA

TRANSLATION
Original in
Portuguese

Proc.º 855/2009 – L.º CIMP

Received: 3 August 09

Translated: 6-11 August 09

TRANSLATION OF FOLIO 1314:

SUPREME COURT OF JUSTICE
PORTUGAL



Case n.º 386/07 – 5th Section
 Judge Rapporteur: António Colaço

Background

In ordinary procedure, the Panel of Judges of the 4th Chamber with criminal jurisdiction of Porto handed down a Judgement on 9.7.2007 whereby **Manuel Albert Soares** was acquitted of a crime of attempted aggravated homicide contrary to sections 22, 23, 73, 131 and 132 (1) and (2) subparagraphs d) and i) of the Portuguese Criminal Code, with which he had been charged.

The Public Prosecutor has lodged an appeal against the *acquittal*, covering only the legal dimension, under section 432 (d) of the 1995 Code of Criminal Procedure. Amongst his allegations, he argued:

1. The defendant planned the murder of his wife in detail, in particular by conceiving its method, and ordered its achievement by contacting third parties;
2. The plan was not achieved for reasons beyond his control;
3. The perpetrator's conduct is qualified as a mediate perpetration, not as an instigation;
4. Indeed, the defendant's conduct is likely to correspond to the 2nd situation covered by section 26 of the CC, which provides: *Whoever commits the act, by himself or through another, ... is punishable as perpetrator...*
5. When planning and conceiving details for execution of a crime, when ordering and paying for its execution, the defendant is defined by doctrine on "perpetrators" as *the man behind*;
6. *The man behind*, who is a "mediate perpetrator" because he does not achieve the act himself but keeps it under his control, under his will, controls its execution and has the possibility of giving it up if he wishes to;
7. In the present case, the reason why the plan was not implemented had nothing to do with the perpetrator's will and the latter was not even aware of the reasons behind its non-implementation.
8. According to legal doctrine, when the immediate actor does not achieve the act, the beginning of the attempt within the sphere of the mediate actor will take

PROCURADORIA-GERAL DA REPÚBLICA

place when his acts are likely to cover, at least, the kinds of acts of execution defined in section 22 (2) (c) of the CC.

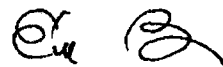
9. When ordering the execution of a plan, the defendant did let the causal process freely evolve, out of his sphere and only under control of the contract executor, whom he had even paid;
10. Hence, as the Porto Court of Appeal did realize in its Decision of preventive arrest imposed on the defendant, the acts perpetrated by the defendant would normally be followed by acts that would lead to the death of his wife, a purpose he wished to achieve;

TRANSLATION OF FOLIO 1315:

11. In other words, the defendant's conduct has surpassed the realm of preparatory acts and translated itself in execution acts, under section 22 (2) (a) of the Criminal Code.
12. Therefore, as a mediate actor, the defendant perpetrated acts of execution of a crime of homicide which he had planned against his wife, Maria Teresa.
13. The appealed Judgement was contrary to the provisions of sections 22 (1) and (2) (c), 23, 26, 73, 131 and 132 (1) and (2) (d) and (i) of the CC.
14. The Judgement should be revoked and replaced by another whereby Manuel Albert Soares would be convicted as mediate actor of a crime of attempted aggravated homicide punishable by the joint provisions of sections 22, 23, 73, 131 and 132 (1) and (2) (d) and (i) of the CC.

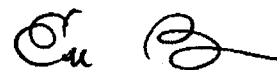
The Defendant *has replied* arguing:

1. The appealed Judgement has correctly applied the Law in force, in particular section 26 of the Criminal Code, and should necessarily be confirmed, and the Defendant acquitted.
2. Indeed, no matter how we analyze the proven facts – in the light of a wide concept of perpetration or of the notion of control over the act -, we always conclude that they may not be covered by the provisions of the Criminal Code for the case where facts would have taken place.
3. Whatever the approach, since it was proven that the Defendant's partners acted freely and fully knowing the facts, the relevant situation should be regarded as one of instigation.
4. Indeed, whatever the approach, in the case of instigation, the commander is criminally responsible for the acts of the executor as long as the latter at least starts the execution.
5. Indeed, it was proven that the Defendant's partners were never ready to kill or to interfere in killing the victim and that they did not perform any act of execution that might lead to the victim's death.
6. The only thing that might have occurred was an instigation attempt, and not instigation itself.
7. In the light of Portuguese Criminal Law, the instigation attempt is not punishable.



TRANSLATION OF FOLIO 1316:

8. Hence, in line with the Supreme Court Decision of 31 October 1996, the 1st instance Court has decided correctly that the Defendant's conduct was not criminally relevant.
9. The justification of the appeal lodged by the Prosecution derives from the legal theory of Mestre Maria da Conceição Valdágua who, indeed, supports that instigation or hiring another person is close to a form of mediate perpetration.
10. But from there to arguing, as the Prosecutor did, that in the present case the doctrine of Conceição Valdágua would mean the punishment of the Defendant, although his partners have not committed any act of execution, does not correspond to the truth of the matter and is even contrary to the legal theory of that Professor.
11. "This would only be relevant for whoever would support, as regards the beginning of an attempt of the mediate actor, any theory that would admit that the attempt might start, as a rule, before the immediate actor would commit any act of execution. We believe that this understanding should basically be rejected" (MARIA DA CONCEIÇÃO VALDÁGUA, "Autoria Mediata em virtude... in *Liber Discipulorum* para Jorge Figueiredo Dias, p. 671 et seqs.).
12. According to Conceição Valdágua, even considering that the hirer is a mediate actor, his punishment should, as a rule, depend on the perpetration of acts of execution by the executor.
13. Hence, by applying to the proven facts the theory of Conceição Valdágua – understanding it as a whole and not only in a few lines as proposed by the Prosecution - we conclude that the criminal conduct of the Defendant was irrelevant because his partners did not commit any act that would, in any way, imply the death of the victim.
14. As regards the Prosecutor's arguments, we recall the Decision by the Court of Appeal of Porto of 20 September 2006 in the framework of an appeal against a coercive measure imposed on a defendant, and the well-known Supreme Court Decision on case *Meia Culpa*.
15. However, there is no comparison between this case and *Meia Culpa*, because there is a "detail" that makes all the difference: while, in *Meia Culpa*, the executors have killed 13 people, in this case the supposed killers immediately reported the situation to the Police.



TRANSLATION OF FOLIO 1317:

16. Besides, as we said, as regards an extended concept of perpetration, the best doctrine believes that "the mediate perpetration supposes that the ordered act reaches, at least, a beginning of its execution".
17. The Supreme Court of Justice has also said that "for the moral responsibility for an act to be punished it is necessary, first of all, that the supposed perpetrator (material author) conceives and wishes the offence (in this case, the voluntary homicide) and starts achieving it". (Summary of SC Decision of 31.10.1996 – Case n.º 04 8948 – www.dgsi.pt).

The interpretation made by the Appellant does not make sense and should not be admissible.

*

The files were then submitted to the Supreme Court and transmitted to the Public Prosecutor and to the Justices of this Chamber (5th), after which they were submitted to decision by the Section President, so that the hearings might be planned.



Personal status of the Defendant: He was under custody from 27.6.2006 to 9.7.2007. From 20.9.2006 until his release, he was controlled by an electronic bracelet.

*

The grounds:

A)

The justification provided by the appellant – the Public Prosecutor – is centered on the legal qualification of the facts and insists in the conviction of the offender as mediate perpetrator of a crime of attempted aggravated homicide, punishable under the joint provisions of sections 22, 23, 73, 131 and 132 (1) and (2) subparagraphs d) and i) of the Portuguese Criminal Code. As we all know, the appealed Judgement, based upon section 26 (last part) of the CC, acquitted the defendant because the Court believed that this was a case of *instigation*, not punishable because the execution or beginning of execution had not occurred; hence, the attempt of instigation should not be punished because the law does not even provide for its punishment.

PROCURADORIA-GERAL DA REPÚBLICA

TRANSLATION OF FOLIO 1318:

The issue now submitted to the Supreme Court is centered upon the degree of participative action of the Defendant, **Manuel Albert Soares**, in the light of the available evidence.

B)

The 1st instance Court confirmed the following proven facts: (*transcription*)

1 - Mr. Manuel Albert Soares and Mrs. Maria Teresa Franqueira Mourão Soares are married to each other.

2 - The couple has two children: Stephen Mathew Soares and Brian Alexander Soares.

3 - The Defendant (Mr. Soares) used to be the Director of company Ibico Portuguesa, Import-Export Ltd., with headquarters in Arcos de Valdevez. Sometime in September 2005 he lost his job and, after that, he started making unidentified phone calls and sending anonymous letters to some firms and legal bodies, denouncing alleged illegal practices by his former employer.

4 - In January 1996, in the framework of the activity of firm "BRAGADOURO - Gestão de Unidades Hoteleiras, Lda" (Hotel Management), of which Mrs. Maria Teresa Franqueira Mourão Soares is a partner and manager, she started her own job in the food and restaurant industry by opening a "McDONALD'S" Restaurant at Av.ª Central, in Braga, Portugal.

5 - As a consequence of the requirements of franchising contracts signed between those firms and McDonald's - which imposed the obligation of two partners, one with 99% of the capital and the other with 1% - Mr. Soares took the role of partner and manager of the firm.

6 - However, all he did was assisting his wife by performing secondary duties, in particular in the administrative or financial field.

7 - This was also the case at the firm "BRABRUGUER - Hotel Management Ld." in which, in November 1999, Maria Teresa (partner and manager) opened her second MCDONALD'S at Variante do Fojo, Gualtar, Braga, where the Defendant would help her as her partner, mainly for different bank transactions on Internet.

8 - Meanwhile, their marriage gradually deteriorated and in September 1999 they eventually broke up.

9 - Although the marriage was over, in the following five years the couple still shared the family house at R. Nossa Senhora da Consolação, 314 - Nogueiró, Braga (Portugal).

10 - That building had been bought by "BRAGADOURO - Gestão de Unidades Hoteleiras, Lda" (Hotel Management) and was later purchased to that firm by the couple, in December 2003. For that purpose, Maria Teresa and the Defendant borrowed money from the Bank MILLENIUM BCP, in a total of 500.000 € (five hundred thousand Euros).



TRANSLATION OF FOLIO 1319:

11 – When the facts were reported and investigated, the divorce of the couple was pending in Court (it had started two years earlier).

12 – Initially, the custody over the children – Stephen and Brian – was given to the mother, but later both children remained under the Defendant's custody.

13 – When the custody over the children passed to the father, his wife left the family house and the couple got really separated as from May 2005.

14 – As from January 2006, following a new Court decision, Brian, their youngest son, was under the care of his mother and Stephen, the eldest son, went on living with his father.

15 – Around 2004, after money was stolen from the firm and due to unjustified absences from work, Mr. Soares was fired from his job.

16 – Although he can speak Portuguese, **Manuel Albert Soares** can not write properly that language and makes grammar and style errors; that is why, in their daily life and in family the couple would speak English with their children.

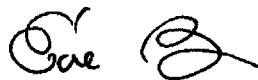
17 – The Defendant would normally use a blue BMW car, model 5351, with plate 40-42-KB, registered in the name of the firm "Bragadouro – Gestão de Unidades Hoteleiras Lda.", as well as a blue Range Rover with plate 71-21-ED registered in name of the firm "Braburguer – Gestão de Unidades Hoteleiras, Lda.". Both cars were equipped with a Toll Free-Pass (named "Via Verde" in Portugal) and the Toll invoices were charged on those firms.

18 – Those expenses would be paid by Mr. Soares' wife and, therefore, she would have access to the register of those cars' trajects whenever they circulated on a highway.

19 – The Defendant **Manuel Albert Soares** conceived a criminal plan in order to kill his wife, Maria Teresa Franqueira Mourão Soares.

20 – For that purpose, he decided to hire one or two persons who would be able to achieve his intents, by paying an amount to be settled. All details, i.e. the method, the venue and the date when the plan would be achieved, would be determined and ordered by the Defendant.

21 – Hence, following a specific plan, on an undetermined date but surely one week before the reception of the letter written in Russian, **Manuel Albert Soares** made a phone call to the warehouse of Sergey Pryada and spoke to the person on the phone – Mr. Alexandr Zubov – for about 3 minutes.



TRAN SLATION OF FOLIO 1320:

22 – The Defendant, who did not provide his personal identification, told Alexandr that he wished to talk to "Yuri" or to the "boss". Alexandr Zubov replied that there was no one with that name in the firm and that the manager could not speak Portuguese, so that he was the right person for him to address any questions.

23 – Manuel Albert Soares then told him that he needed someone to "take care of a person" (sic). Alexandr Zubov thought he was looking for someone to look after an old or sick person.

24 – Alexandr suggested the Defendant to go to a firm named "TROIKA" at Rua do Almada, 314 in Porto, where he might place an advertisement as the firm even had specific forms for any wanted services.

25 – The Defendant refused Alexandr Zubov's suggestion and told him he would rather send a letter; however, he did not enquire about the address where he was supposed to send it.

26 – In the week between 15 and 19 May 2006, the Defendant sent an Express letter to the firm "TROIKA" in Porto. The letter, written in Russian, was placed in a normal white envelope (not indicating the sender) and addressed to "Mr. Yuri, Russinter, Lda." at Rua do Almada, 314, 4050-033 Porto. Those words had been written by using a printing metal device named "escantilhão".

27 – The envelope was just like the model inserted on folio 805 of the files, i.e. was similar to the one he later used when he sent the fist letter written in Portuguese, which Sergey Pryada – identified on folio 813 of the files – handed to the Police in Porto when he reported the facts.

28 – It was Sergey Pryada who normally opened the correspondence sent to the firm; hence, he opened the envelope.

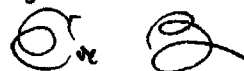
29 – The letter had been written on a computer, by using a white sheet of paper of the size A4. The text was written in Russian, i.e. in Cyrillic alphabet.

30 – Although the words on the text existed and were correctly written, the letter didn't make any sense and was not more than a set of disconnected sentences that could not be understood.

31 – Sergey Pryada kept the letter, in the firm, for two or three days and then destroyed it. Meanwhile, Alexandr Zubov had read the content of the letter.

32 – Later on, Sergey Pryada told Oleg Reilean, his friend, that he had got the said letter.

33 – Three or four days after having sent the letter, possibly on 22nd or 24th May, the Defendant made another phone call to the warehouse. Alexandr Zubov answered the phone while Sergey Pryada was with him.



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TRANSLATION OF FOLIO 1321:

34 – The Defendant asked Alexandr whether they had received his letter and Alexandr said yes, but he added that the text of the letter was not clear.

35 – By then, Alexandr Zubov still believed, just like Sergey Pryada, that the Defendant wished to hire a person to care after a specific person; that is why he suggested the Defendant that he should send a new letter written in Portuguese, so that they might place an ad at the shop's premises.

36 – On 25 May 2006, the Defendant mailed an envelope to that firm (see fl. 805 of the files) containing the letter whose original is on fl. 806.

37 – On that letter, the Defendant provided the first data – though scarce – on the person he needed “to care after” – meaning to be killed – i.e. a “person” who lived in Braga and who had children.

38 – He provided the first data on the daily routine of the target-person – drives the “children” to school by car at 8:30 AM and returns ten minutes later; parks the car in front of the building where she lives.

39 – He provides information on the moment and venue where the crime should be perpetrated – when the victim returns home after leaving the children in school, in the moment when she gets out of the car.

40 – He decides on the weapon to be used – a fire arm.

41 – He determines the “modus operandi” – two shots on the head.


42 – He imposes a simulation for the crime setting – i.e. staging of a robbery whereby her pocketbook would be stolen.

43 – He sets the date for the crime – 9 June “without fail”.

44 – He sets the rules to be followed when perpetrating the crime (homicide) – using a stolen car or a car with a false plate.

45 – He sets the rules for perpetration of the crime – the victim's pocketbook shall be destroyed together with the weapon, and the perpetrator shall leave the country.

46 – He confirms that he will send a second letter – enclosing a map of the area where the victim lives – and stresses that the killer should know the area, should rehearse the way in and out of the venue and should not use any highways as there were video surveillance cameras. A few days before the date of the crime (9 June), he promises, he will mail a third letter identifying the victim's car and plate.



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47 - On an undetermined date, probably one day after his letter was received, Sergey Pryada showed the letter to Alexandr Zubov.

48 - On 29 May 2006 at 11:25 AM, the Defendant made a phone call from a phone booth with number 22 9961834 - located at Av.^a Dr. Fernando Aroso, Shell, Leça da Palmeira, Matosinhos - to Sergey Pryada's warehouse. The call lasted 104 seconds.

TRANSLATION OF FOLIO 1322:

49 - After explaining that he had written the above referenced letter, he asked whether they had received it and whether they had already found someone to perform the service; the reply was negative.

50 - On 29 May 2006, Sergey Pryada called his friend Oleg Reilean and asked for his help and advice as he had something to show him.

51 - After that phone call, Sergey and Oleg both met and Sergey showed Oleg the letter and told him that on that very day the person who had written the letter had already called his warehouse in order to make sure they had received his letter and to find out whether they had already found a killer.

52 - He told Oleg that he had previously received a letter written in Russian, which he had thrown away as he couldn't understand its content.

53 - They then decided that the situation should be reported, which they did on that very day, at 4 PM, before the Judiciary Police Headquarters in Porto.



54 - On 30 May 2006 at 10:42 AM, Manuel Albert Soares made another phone call - from phone booth n.º 22 9958037 located at Av.^a Fernando Aroso, DF 1288, Leça da Palmeira - to the Sergey Pryada's warehouse, and spoke to Alexandr Zubov for 25 seconds.

55 - During that phone call, Manuel Albert Soares asked Alexandr whether he could "do this job" (sic) and Alexandr said no and added that he didn't even want to do it, after which he immediately hang up the phone.

56 - Sergey Pryada, who was at the warehouse, interrogated Alexandr on the phone call he had just received and the latter explained the purpose of the phone call.

57 - Sergey Pryada then informed Alexandr Zubov that he had already reported the situation to the Judiciary Police in Porto. He told Alexandr that, in the case of any future phone calls, he should not reply that he wouldn't arrange anybody to perform the requested service.

58 - Instead, Alexandr should cheat him, by telling Mr. Soares that they would find someone; that way, they would get all the necessary data for the Police to identify the author of these acts; those were the instructions he had received from that Criminal Police body when he had reported the situation.

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59 – Still on 30 May 2006 at 10:47 AM, from the same phone booth, the Defendant called again Sergey Pryada's warehouse and spoke again to Alexandr Zubov.

60 – The conversation, which lasted 216 seconds, was heard by Sergey Pryada, who was giving instructions and indications to Alexandr on what he should say and ask. Indeed, Alexandr, while knowing that the situation had been reported to the Police, was hesitant and willing to hang up the phone. On the other hand, Sergey wanted him to keep the conversation as long as he possibly could.

TRANSLATION OF FOLIO 1323:

61 – The Defendant (Mr. Soares) kept asking Alexandr whether they knew anyone who might kill the victim and Alexandr, confronted with the Defendant's determination, said yes but added that they would have to contact the potential executor, which might take some time.

62 – Alexandr Zubov asked the Defendant how much would he be willing to spend and the Defendant replied by asking him how much would they charge him.

63 – Alexandr Zubov replied that he had no idea on the amount because the price would be set by the executor. Therefore, neither the Defendant nor Alexandr Zubov mentioned any price in that phone conversation.

64 – However, Alexandr Zubov and the Defendant discussed the possibility that, after setting the price for the "service", the executor might require a down-payment of half the amount.



65 – Although they discussed those issues, they did not make any arrangements because, as explained by Alexandr Zubov, the executor was the person who would set the price and the method of payment.

66 – On 2nd June 2006 at 10:25 AM, the Defendant made another phone call - from a booth with n.º 22 9964475 located at R. Dr. José Domingues Santos - c/r, Avilhô, Lavra - to the warehouse held by Sergey Pryada. He spoke to Alexandr Zubov for 56 seconds and, again, Sergey was listening to the phone call and instructing Alexandr on how to answer.

67 – The Defendant Manuel Albert Soares first asked Alexandr whether they already knew how much would be charged for the requested service. Alexandr said yes, and proposed an amount of € 10,000 (ten thousand euros).

68 – The Defendant found the price to high and tried to negotiate the amount. However, Alexandr Zubov justified the price by mentioning the requirements he had made, in particular that the killer should leave the country, as well as all other expenses involved.

69 – The Defendant accepted the price - € 10,000 - as well as the down-payment of half that amount before the crime. He explained that he would send another letter with more detailed instructions on how the service should be performed.

PROCURADORIA-GERAL DA REPÚBLICA

70 – On 6 June 2006, the Defendant mailed another letter (see original on folio 809 of the files) containing a plan of the city of Braga (see folio 808 of the files), both inside an envelope whose original is on folio 807 of the files.

71 – On the letter, he first gives a detail he had never given before on the target – it's a woman.

72 – He indicates her address – he indicates on the city plan the direction to be taken to her house by writing arrows on the relevant streets to be passed until her house – and writes (with a metal tool) the words "BUILDING A-4" with an arrow indicating the street where the building is located.

TRANSLATION OF FOLIO 1324:

73 – He indicates the spots where the woman may be found – restaurant MCDONALD'S at Quinta do Peões, indicated on the map with a circle – and Av.ª D. João II and other streets in that area, also indicated on the map with lines and a circle.

74 – He gives instructions on care to be taken – the premises of the restaurant have video cameras – and on which car should be used for the crime – a stolen car, or a car with a false plate, but not the same car used on the road. All spots indicated on the map should be checked on different occasions, in the morning and during day time.

75 – He repeats all recommendations given in his previous letter – not using any highways, being familiar with the roads and streets, the perpetrator should leave the country and which would be the best time for the crime – in the morning, when the victim would return home after leaving "the children" in school – the need to simulate a robbery and, eventually, destroying the used weapon.

76 – He shows doubts as to the date – as an alternative to 9 June, referred on the first letter, he suggests 16 June.

77 – He explains that, as soon as he is sure of the date, he will send another letter with information on the color and plate of the vehicle used by the target and he will provide half the settled price.



78 – He adds that he will pay the rest after the service.

79 – He requests them to keep the contact details of the executor, for "future jobs" (sic).

80 – Sergey Pryada showed the letter and the map to Alexandr Zubov and he made a phone call to Oleg Reilean, telling him that he had received another letter.

81 – When they met, Sergey Pryada showed Oleg the letter and the map he had received. Oleg took the letter and read it.

82 – On the following day, they took the letter to the Judiciary Police Headquarters in Porto.



83 – On 9 June 2006 at 9:49 AM, the Defendant made another phone call – from phone booth with telephone n.º 253821105 at Largo Marechal Gomes da Costa, Arcozelo, Braga – to the warehouse of Sergey Pryada. He spoke to Alexandr Zubov for 245 seconds, while Sergey Pryada overheard the conversation.

84 – The Defendant **Manuel Albert Soares** first made sure his correspondence had been received at R. do Almada n.º 314, Porto. He then said he had doubts on the date when the service should be performed and he gave two possibilities for suppression of the target: either on 16 or on 23rd June.

85 – He tried to get from Alexandr Zubov the phone number of the executor, but Alexandr refused, arguing that the executor wished to remain incognito

TRANSLATION OF FOLIO 1325:

86 – The Defendant expressed some concern at the fact that he should pay half the arranged price before the service would be performed, as he wouldn't have any guarantees that the service would indeed be performed.

87 – Alexandr Zubov replied that the executor didn't have any guarantees either that, after the crime, the Defendant would keep his promise, i.e. that he would provide the rest of the money.

88 – After that reply, the Defendant **Manuel Albert Soares** said that, a few days before the arranged date, he would send another letter with more detailed instructions and he would pay € 5,000 (five thousand euros).

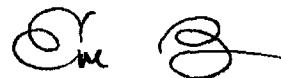
89 – On 16 June 2006 at 10:19 AM, the Defendant made another phone call – from phone booth with telephone number 234 542605 – at the restaurant area of Pransor, Gas station of Antuã, highway A1, direction North/South – to the warehouse of Sergey Pryada.

90 – Alexandr Zubov wasn't at the warehouse and the call was answered by Alexandr Pryada, the brother of Sergey Pryada. Their conversation took 24 seconds.

91 – **Manuel Albert Soares** took Alexandr Pryada for Alexandr Zubov and immediately asked him whether everything was ready for the service to be achieved in the following week. Alexandr Pryada explained that he wasn't Alexandr Zubov and told that the latter wasn't there, so that he should call him later.

92 – At 11:10 AM, the Defendant made another phone call – from phone booth with telephone number 236 911411 – at the restaurant area of Eurest, Gas station of Pombal, highway A1, direction North/South – to the warehouse of Sergey Pryada. The phone was answered by Alexandr Zubov, who had returned meanwhile.

93 – In a short conversation of 31 seconds, the Defendant asked Alexandr Zubov whether everything was ready for the service to be performed on the following week. Alexandr said



yes and **Manuel Albert Soares** promised to send him more details, as well as € 5,000 (five thousand euros).

94 – Some time between 7:00 PM of 18 June 2006 and 9:00 AM 19 June 2006, **Manuel Albert Soares** left at the firm "TROIKA", at R. do Almada n.º 314 Porto, an envelope (folio 810 of the files) containing a magazine clipping (folio 811 of the files), the letter on folio 812 of the files and

95 – another smaller closed envelope containing 50 (fifty) bank notes of the European Central Bank with facial value of 100 (a hundred) Euros, for a total of 5,000 (five thousand) Euros (see receipt on fl. 39 of the files and photos on fls. 41-44 of the files).

96 – On the letter, written with a metal tool ("escantilhão"), the Defendant indicates the brand and model of the car used by the victim – an Audi Allroad.

97 – He provides the accurate license plate of the car – 11-30-QX.

98 – He gives the victim's age – 46.

99 – He sets two dates for the crime (homicide) – 22nd or 23rd June.

100 – He imposes the execution of all his instructions.

101 – He orders the destruction of all documents.

102 – The magazine clipping had been carefully taken from N.º 861 of the Magazine "Auto Hoje", published on 12 May 2006, so as to suppress the footer which identified the magazine where it had been taken from.

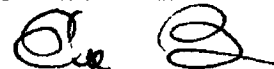
103 – That clipping shows the photo of the front of a car similar to the victim's vehicle, as well as a photo from the back. On both photos, the Defendant wrote the plate 11-30-QX, corresponding to the car of the victim.

104 – Since the car on the clipping has a different color from the victim's car – black – on the frontal picture the Defendant wrote the word "Black", specifying the correct color of the vehicle. In order to leave no doubt, he stuck a paper band where you could read, in Russian, "black color".

105 – On 19 June 2006 at around 9:00 AM, when opening the firm's door, Rimma Pryada found the envelope on the floor, close to the entry door.

106 – Considering the envelope's volume and remembering the Defendant's words in their previous conversation, Sergey Pryada suspected that the envelope might contain the money and a letter with the last details for the requested service.

107 – Therefore, he put the envelope in a plastic bag and went to the warehouse. After putting gloves, he checked the content of the envelope, read the letter, saw the magazine clipping but



did not open the smaller envelope, which was closed. However, considering its volume, he guessed it would contain the money.

108 – He acted in that way because he thought that the Defendant, as he had done before, would make a phone call to the warehouse in order to make sure the envelope had been received and, in the course of the conversation, he would realize he didn't know about its content, so that he would suspect they might have reported him to the competent authorities.

109 – He then showed the envelope's content to Alexandr Zubov and told him about the time and circumstances where he had received the envelope.

110 – He then called Oleg Reilean and told him what was going on. They arranged a new meeting.

TRANSLATION OF FOLIO 1327:

111 – During that meeting, Sergey Pryada did not allow Oleg Reilean to have access to the envelope's content, i. e. to the letter and the magazine clipping. However, during their conversation, they shared their suspicions that the envelope seemed to contain money, as arranged for the criminal plan.

112 – After that conversation, they both went to the premises of the Judiciary Police in Porto and handed the envelope with its content, as shown on the receipt inserted on folio 39 of the files.

113 – On 20 June 2006 in the afternoon, the Defendant tried to contact the warehouse of Sergey Pryada. In order to do that, he made 4 (four) phone calls from phone booths with telephone numbers 22 6100714, 22 6100762, 22 9961834 and 22 9957361 located at Av.^a António Aroso, Aldoar, Passeio Alegre, Porto, Av.^a António Aroso, Porto and Lugar de Padrão, Perafita, accordingly.

114 – Alexandr Zubov did not answer any of the phone calls, but he took note of each phone number.

115 – On 21st June 2006 at 10:50 AM, 10:53 AM and 10:55 AM, the Defendant tried again to contact the warehouse of Sergey Pryada over the phone, from a phone booth with number 253 821105 located at Largo Marechal Gomes da Costa, Arcozelo, Braga.

116 – However, Sergey Pryada did not answer any of those calls.

117 – On 26 June 2006 at 12:12 PM, the Defendant made another phone call – from a telephone booth with n.º 22 5497172, located at Av.^a Fernão Magalhães / R. Santa Justa, in Porto – to the warehouse of Sergey Pryada. The call was answered by Alexandr Zubov, and they both spoke for 125 seconds.



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118 – The Defendant **Manuel Albert Soares** inquired **Alexandr Zubov** on why the hired service had not been performed, insisting that he had provided all details and had even sent half the agreed price.

119 – **Alexandr Zubov** replied that he didn't know why the service had not been performed and he explained that they acted as mere intermediaries and had no kind of connection to the matter.

120 – He added, however, that certainly something should have prevented the executor from achieving the arranged criminal plan. He promised to give him the phone number of the executor, so that the Defendant might contact him directly and clarify the situation.

121 – On 27 June 2006 at 10:21 AM, the Defendant made another phone call – from a telephone booth with n.º 253 615810, located at *Praceta Francisco Sanches*, *S. João do Souto*, in *Braga* – to the warehouse of *Sergey Pryada*. The call was answered by **Alexandr Zubov**, and they both spoke for 331 seconds.

122 – The Defendant **Manuel Albert Soares** complained about the situation and asked **Alexandr Zubov**, again, why the criminal plan – the requested service – had not been executed.

TRANSLATION OF FOLIO 1328;

123 – During that talk, **Alexandr Zubov** insisted that he wasn't aware of anything and there wasn't anything he could do, as he wasn't more than an intermediary.

124 – **Alexandr Zubov** then gave the Defendant the number of a cellphone provided by the *Porto* Judiciary Police to *Oleg Reilean*, in order to be used in that kind of situation.

125 – On 27 June 2006 at 10:26 AM, the Defendant made another phone call – from a telephone booth with n.º 253 617677, located at *Praceta Parque de Exposições*, *S. José de S. Lázaro*, in *Braga* – but couldn't reach the warehouse of *Sergey Pryada* as the phone booth was not working properly.

126 – After that, the Defendant **Manuel Albert Soares**, who had a BMW, model 535 i, with plate 40-42-KB, entered that car and drove towards *Viana do Castelo*. In that town, at around 12:30 PM, he was stopped by the Judiciary Police of *Porto*, as shown on the report on fl. 110 et seq. of the files.

127 – The woman, aged 46, driving a car of the brand Audi, model Allroad, with plate 11-30-QX, was the Defendant's wife, the complainant *Maria Teresa Franqueira Mourão Soares*, on whom the Defendant had given all personal details and habits to the purported hired persons, so that they would carry out his criminal plan, i.e. to kill her.

128 – When the Defendant **Manuel Albert Soares** conceived the described criminal plan and hired one or more persons to achieve it, when providing bank notes of the *European Central Bank* corresponding to half the price he would pay for the hired service, when indicating the

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time and the method for achievement of his criminal plan, he had a total intent to kill Maria Teresa Franqueira Soares, his wife.

129 – The only reason why he did not succeed did not depend on his own will, i.e. was because the hired person or persons informed the competent criminal police body, the Porto Judiciary Police, thus aborting the criminal plan conceived by the Defendant.

130 – Therefore, the Defendant acted willfully and knowingly, as he was aware that his conduct was punishable and forbidden.

It was also proven that:

131 – The Defendant does not have any criminal records.”

TRANSLATION OF FOLIO 1329:

C)

The issue for the Supreme Court of Justice to decide is now focused on the dimension of **Manuel Albert Soares'** role and on charges against him, on the basis of facts proven before the 1st instance court. Criminal law provides a legal, repressive framework clearly enshrined in section 10 of the CC, when referring commission by action or by omission. And, more specifically, on a criminal level whenever any preparatory acts might be referred which, in general and under section 21 of the CC, are not punishable (unless otherwise provided) because they are not described in the qualifying characterization of the crime.

The features of the Defendant's behavior, which should be weighed here in order to characterize his conduct for purposes of incrimination or not, are as follows: *By circumstances that don't have to be deeply explored but connected to a difficult situation in the couple's life – the Defendant and his wife – the Defendant conceived a plan to physically suppress his wife Maria Tereza Franqueira Mourão Soares (fact 19). Hence, around 7 May 2006 (fact 21), the Defendant Manuel Albert Soares made a phone call to the warehouse of Sergey Pryada. The phone call was answered by Alexandr Zubov. In his phone call, he informed that he needed someone "to take care of a person", an expression that was later understood as meaning "TO KILL" a person who lived in Braga (fact 37) and that this person was his wife (fact 71). Indeed, it was the Defendant's wife, the complainant Maria Tereza, whose personal data and habits had been provided by the Defendant to the potentially hired persons, so that the latter would achieve his criminal plan, i.e. for them to take her life (fact 127).*

Contacts with Sergey and Alexandr, whom the Defendant had ordered the murder of his wife, took place by different phone calls and letters on different occasions (facts 21, 26, 33, 36, 48, 54, 59, 66, 70, 83, 89, 92, 94, 113, 115, 117, 121 and 125).

In order to implement the ordered death, the Defendant even settled an amount to be paid of 10,000 € (fact 67) and paid a fist amount by delivering 5,000 € (fact 95).



TRANSLATION OF FOLIO 1330:

*The Judiciary Police was informed on these events from 29 May 2006 (facts 50 and 53) when Sergey, together with his friend Oleg Reilean, reported the facts to that Police body. Until then, as regards the relationship between the Defendant **Manuel** and Sergey and Alexandr, there had been two phone calls made by the Defendant, a letter written in Russian (fact 26) but which was destroyed (fact 31) and another letter written in Portuguese, delivered to the Judiciary Police on 29 May 2006. It was the Judiciary Police that advised Sergey and Alexandr to "cheat" the Defendant on the initiatives he was taking (fact 58).*

D)

A Court does not try men or facts separately. What it does try is a male or female citizen who *perpetrated acts* (by action or omission) that translate a kind of anti-social behavior covered and punished by criminal law. This statement becomes specially relevant when we stress the clear and obvious non-punishment of whoever may have the purpose of perpetrating a criminal offence but who does not go beyond the mere intent admitted by democratic societies where there is a unanimous consensus of the legislative policy tending to punish an offence of opinion (the *nuda cogitation*), as bad as may be the intentional approach when not followed by facts.

Criminal law corresponds to this legislative, repressive requirement and its expression is the requirement deriving from section 10 of the CC, when mentioning the perpetration by action or by omission. More specifically, on a criminal level, it might always refer to preparatory actions which, in general and under section 21 of the CC, are not punishable (unless otherwise provided) because they are not described in the qualification of the offence.

E)

As we mentioned, what is at stake here is the meaning of the offender's intervention in the whole process. Both the 1st instance Judgment and the procedural intervention of the Appellant and of the Defendant are quite clear as regards the interpretative examination of the dogmatic approach deriving from the most recent doctrine as regards the dimension of *co-perpetration* and of *mediate perpetration*.



TRANSLATION OF FOLIO 1331:

That is the case described by Maria da Conceição Valdágua (Central Figure, Instigation and Mediate Perpetration – contribution to an inter-systematic review of Claus Roxin's doctrine on the limits of mediate perpetration considering participation in the framework of control offences – Research as homage to Cunha Rodrigues – I pp. 917 et seqs.), by Figueiredo Dias (*Revista de Legislação e Jurisprudência* n.º 3937, Year 135, March-April 2006, p. 225, Note 4, and *Sumários de Direito Penal* 1976, pp. 87 et seqs.) and Figueiredo Dias / Susana Aires Sousa (RLJ – n.º 3937, Year 2006, pp. 256 et seqs.).

It is quite clear that doctrinal references are a documental basis that supports and provides a frame and essence to the patterns that legal theory should follow. However, they may never have the meaning of an absolute dogma. Without contesting the *magister dixit*, the judge should submit it, as relevant, to a critical judgment, when applying it to the reality of things and of human living – starting precisely by material truth, which *only proven facts may faithfully confirm, when confronted to the relevant legal provision*. Only later will the judge examine, assess and decide, by using criteria and tools provided by doctrine, i.e. departing from theoretic formatting in order to cover real facts.

F)

What is at stake here is how to characterize the behavior of Albert Soares, with the participation and intervention of Sergey Pryada and of Alexandr Zubov.

This case is about the fact that the Defendant has planned to kill his wife Tereza and, in that context, has contacted two Russian citizens in order to materially execute the planned homicide. Contacts between the Defendant and the hired persons took place by letters and phone calls between around 7.5.2006 and 27.6.2006, when the Defendant was detained. After those contacts, the Defendant, on his letter of 25.5.2006, has clearly indicated that the purpose was to kill a person with children (fact 37) and later said it was a woman (fact 71); eventually, it became clear that it was the Defendant's wife, Maria Tereza (fact 127); he also gave instructions on how to do it and provided every necessary detail for the perpetration of the crime. On 29.5.2006 the Judiciary Police was contacted (facts 50 and 53).



TRANSLATION OF FOLIO 1332:

After that, even though the Police gives instructions for them to "cheat" the Defendant, the two Russian citizens tell the Defendant that they *accept to achieve the plan*, i.e. the task to kill, and set a price (10,000 €). A first down-payment of half that amount is paid on 22nd or 23rd June 2006.

F.1.)

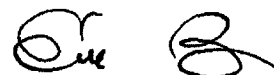
It should be noted that in the context of the relationship between the Defendant and those Russian citizens, even though the latter have mentioned the role of a hypothetical *third party* as executor, the presence of that third man was never found. The doubt on his existence is even stronger when they speak about this "third man" even after contacting the Judiciary Police.

We should admit, then, that with or without a "third man", *the Defendant perceived the whole situation as though Sergey and Alexandr had accepted his proposal and were in charge of its execution, according to a calendar for a murder*. Indeed, the existence of that third party would have no interest for the offender. His basic concern was that the murder of his wife would take place, no matter who would perpetrate the crime ... *as long as not in his own hands*.

In order to reach this goal, the Defendant made an *agreement for the perpetration* and set the time, method and venue requirements, and even made a down-payment of half the settled amount.

G)

When examining the dichotomy revealed by all parties, we should stress that the Defendant **Manuel Soares** has proposed on 25.5.2006 the *plan for a crime*, i.e. the whole process for a homicide (facts 36 to 46), and matured it on 29.5.2006, even though on that day the whole situation was reported to the Police by Sergey and Oleg. Indeed, it was proven (fact 49) that the Defendant called the warehouse of Sergey in order to *find out* if they had already found a person to perform the service. *He had a negative answer, i.e. they hadn't found anyone*, considering the evolution of the facts.



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TRANSLATION OF FOLIO 1333:

That phone call of *implicit acceptance of the proposal* is the clear sequence of *execution* acts normally covered by treaties and enshrined in the provisions of section 22 (1) and, otherwise, in its paragraph (2) subparagraph c) of the CC¹. Indeed, if this conclusion of implicit acceptance expresses an action control by the relevant person, it also confirms, as regards the intellectual representation, the control over the causal process and the control over the act by the Defendant until the final result, even though the action control may also eventually belong to the immediate perpetrator. On the basis of Sergey's attitude, it would not be reasonable for the Defendant to think that the Police knew of his project, nor even on the basis of the mental process of Sergey or Alexandr.

Indeed, since the plan was accepted, the victim was immediately and directly placed in danger, out of the (absolute) control of the Defendant's intervention, as regards the specific execution of the "service". The time connection between the moment when the attempt began and the time when the production of a result was represented was clear (see fact 43) and, when the situation is analyzed (as it should be) from the Defendant's point of view, all that would be needed for the goal to be achieved was the settlement of a "price" and the transmission of the clear identification of the relevant person. These acts, which "according to common experience and with the exception of unpredictable circumstances..." are – just like the global formulation of a proposal – "... deemed to be followed by acts of the types referred to in the preceding subparagraphs...", i.e. planned final acts for simulation of a robbery, with planned shootings.

H)

In the context of these arrangements, we should now clarify the role played by the Defendant in the whole process of will formation and of consequent action for the commission of a murder. We all know doctrine on criminal action, but we should try to conceive the role effectively played by **Manuel Soares** in this case.

Under section 26 of the CC, *Whoever commits the act, by himself or through another, or takes direct part in its execution, in agreement or together with one or more persons, as well as whoever intentionally induces another to commit an act is punishable as perpetrator, provided there is execution or commencement of execution.*

¹ Article 22 (2) of the CC: Execution acts are: a) Those acts which fulfil a constituent element of a type of criminal offence; b) Those acts suitable to produce a typical result; or c) Those acts that, according to the common experience and with the exception of unpredictable circumstances, are deemed to be followed by acts of the types referred to in the preceding subparagraphs.

Eva *B*

TRANSLATION OF FOLIO 1334:

This provision covers four methods of criminal participation, enshrined in Portuguese penal theory as follows:

- Immediate perpetration – committing the act by himself;
- Mediate perpetration – committing the act through another;
- Co-perpetration – taking direct part in the act execution by agreement or together with others; and
- Instigation – intentionally inducing another to commit the act, provided there is execution or commencement of execution².

H.1)

It should be noted, in this context, that on the basis of this classification, the 1st instance Court has acquitted **Mr. Soares** because the Court shared the understanding that this was a case of instigation, which shouldn't be punished because there was no act of execution or commencement of execution.

H.2)

As a matter of fact, the *perpetrator* is connected to an *execution*. There is no *perpetration* without *execution*. But the *perpetrator* is not only the person who executes the act in itself. The *perpetrator* is also, indeed, the person *who executes the act through another*. That is the case of *mediate perpetration*. It is clear that section 26 of the CC has adopted a *wide notion of perpetrator*. The latter is, ultimately, a “main player” (see Cavaleiro Ferreira, *Lições*, I – 4th ed., 473). Under the mentioned *theory on the control over the act*, the perpetrator is the person who, according to the meaning of his contribution, controls the course of the fact or, as decided by the Supreme Court, “according to the relevance of his effective contribution, shares the control over the course of an act” (CJ/STJ – 22.11.2006 – XIV, 3/230).

“Mediate perpetration is a form of perpetration and, just like immediate perpetration, is characterized by the existence of the fact control. It is the mediate perpetrator (the man behind) who achieves the penal type, so that for the execution of a typical action he uses another (the man in front) as a “tool” – JESCHECK – Penal Law Handbook – Spanish version – p. 604).

² Note 2 to section 26: *Código Penal anotado e comentado* – Victor Sá Pereira / Alexandre Lafayette – *Quid Juris*.



TRANSLATION OF FOLIO 1335:

H.3)

However, *instigation* goes beyond the cognitive field of reality as shown in the files and the notion of *mediate perpetration* should be distinguished from that of *instigation*. The appearance of a purported uniform treatment between the two concepts is not accurate when confronted to section 26 of the CC. Indeed, [in section 26 of the CC, instigation and mediate perpetration are differently structured: under this provision, the punishment of whoever *intentionally induces another to commit an act* depends on the existence of an *execution or commencement of execution*, but the punishment of whoever *commits the act ... through another* does not imply this requirement, nor any other similar requirement. (...) This different structure of *mediate perpetration* and of *instigation* is specially relevant in a legal system that, as ours, does not punish the *instigation attempt* because that means that the mediate actor, where his behaviour is interpreted as one of instigation, will not be punished where the execution or commencement of execution by the instigated person does not take place. Differently, in cases of mediate perpetration, the provisions of section 26 of the CC do not require, for the liability of the mediate perpetrator, a commencement of execution by the immediate perpetrator and, hence, do not exclude the possibility of punishing the "man behind" for attempt since a moment prior to the time when the immediate perpetrator starts committing the acts of execution of a specific legal type of offence. (...) Knowing whether that moment, before the acts of execution by the immediate perpetrator, coincides with the *commencement* or with the *end of the execution by the mediate perpetrator over the executor*, or with the moment when the mediate perpetrator *looses control over the course of events*, or with the conception of an *immediate danger to the legal asset*, is an issue that must not be decided here. In any way, it seems correct to conclude that, under Portuguese criminal law in force, when the immediate perpetrator does not achieve any acts of execution of a typically unlawful act, the context for punishment of the mediate perpetrator may be wider (may commence earlier) than that for punishment of the instigator] – Maria da Conceição Valdágua – in *Central Figure, Instigation and Mediate Perpetration* – contribution to an inter-systematic review of Claus Roxin's doctrine on the limits of mediate perpetration considering participation in the framework of control offences – Research as homage to Cunha Rodrigues – I pp. 932/934).



PROCURADORIA-GERAL DA REPÚBLICA

TRANSLATION OF FOLIO 1336:

Complementing this doctrinal understanding, the statements of G) above render apparent the *execution act* committed by the Defendant as mediate perpetrator, which means that the requirements for his possible punishment are met.

H.4)

This wide concept of perpetration, enshrined in our CC since long, is explained by the evolution of contemporary human society where the inherent multiple activities developed in the community have led to a conception that is more coherent with prevailing problems. In this regard, the context where crime takes place is well known, mostly in the case of organized and cross-border crime. Also in this context, as a result of the specific features of human way of living, different forms of anti-social behavior are arising that would not prevail years ago. That is the case, nowadays, of an increase in perpetration of the so-called "ordered crimes" where homicide has reached a frightening degree of occurrence. While this understanding involves, in the framework of criminal policy, an increasing role of general prevention, the truth is that these proceedings are quite determining in making us abandon, at least as a principle, a complacent understanding of the phenomenon, mainly where the affected value is the supreme asset of *human life*.

I)

As we mentioned, the Defendant's behavior and participation is necessarily connected to the "Tatbestand" as *mediate perpetrator*, considering his direct, decisive connection to Sergey and Alexandr. His purpose was to kill his wife and, for that purpose, to order them the achievement of that ultimate goal. That is why he made arrangements with them in order to reach a common determination and a financial settlement, which were eventually achieved by him when candidly providing € 5,000. This was added by a whole set of contacts by phone and by letter in view of an agreement for the ultimate goal of physically suppressing the victim. At least until 29 May 2006, when the Judiciary Police was informed, the potential executors have revealed an effective adherence to the Defendant's proposal, by encouraging the belief and trust of the Defendant towards the apparent relationship thus established.



TRANSLATION OF FOLIO 1337:

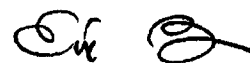
Indeed, the acceptance of the apparent relationship thus established [means that if the “man behind” changes his mind and tells the hired person that he will not pay the proposed amount or that, after all, he does no longer wish to execute the act, the hired person will not commit the criminal act. However, the person who holds in his hands the ultimate decision on the execution of the act also holds that *power of super-determination of the causal process leading to the achievement of the legal type of crime*, which is the quintessence of the fact control. (...) As regards the hired person, this is the person who, under the said circumstances, accepts to act as executor of a criminal plan conceived by the mediate perpetrator and totally submits to his will. Hence, control over the fact, just like control over will, is exercised by the mediate perpetrator, although the executor also controls the act, as a form of control over action.] – (see Maria da Conceição Valdágua – *ibidem*, p. 937).

The truth is that, until he was detained by the Judiciary Police, the perpetrator, as mediate actor, held control over the act, considering the possibility, always open, of replacement of the “executor”, considering also the ulterior refusal of the selected person behind a Police advise, shown in the files, to “cheat the Defendant in order to avoid a replacement”.

J)

In the light of sections 131 and 132 of the Criminal Code, the Defendant’s goals involved the perpetration of a crime of aggravated homicide.

The main question, however, lies with the notion of *attempt*. As we all know, the commencement of an attempt takes place at the very moment when the circle for protection of the rights of their holder is objectively revealed as threatened by the performed act. According to Jescheck / Weigen, through the attempt, the offender “immediately triggers the achievement of the offence”.... We have shown above that the whole behavior of the Defendant was intended to contribute towards the goals he wished to achieve. In other words: when ordering a crime; the adequation and reliability of the tools chosen and the contacts made; planning the *modus operandi*; the indication of a time, method and venue for perpetration of the crime against the victim, whose personal data he carefully indicated; the settlement of an amount to be paid – all these details correspond to the provisions of section 26 of the CC and indicate a mediate perpetration in the attempted form covered by section 22 (2) c) of the same Code.



TRANSLATION OF FOLIO 1338:**K)**

It is impossible no to see in the proven facts and in the provisions of Portuguese criminal law the responsibility of the Defendant as mediate actor in a crime of aggravated attempted homicide against his wife Tereza.

The CC in force specifically mentions an aggravating circumstance where the act is perpetrated against a "spouse, ex-spouse,..." (section 132 (2) b)). However, this aggravation was not present in the CC in force when the facts took place which, therefore, was more favorable to the Defendant.

K.1)

The care put by the Defender in preparing and planning the whole crime, in particular the detail in all the instructions he gradually provided to his intermediaries, all show the premeditation of his acts. It wasn't even shown that he had any remorse or that there were other relevant circumstances that might mitigate his responsibility. Therefore, direct intent is clear in all his behavior.

K.2)

Aggravated homicide is punished with 12 to 25 years imprisonment. Considering the joint provisions of sections 23 (2) and 73 of the CC, the abstract penalty is 2 years – 4 months – 8 days to 16 years – 8 months imprisonment.

We believe that, in this case, the adequate penalty should be close to the legal minimum level but not much higher than that limit. That is why the sentence imposed is 4 years and 6 months imprisonment.

K.3)

However, considering the provisions of section 50 of the CC in force, we believe that the Defendant should not benefit from any possibilities of suspending the execution of the custodial penalty. Indeed, this crime is considered very grave in a civilized, contemporary society.

Eva *B*

TRANSLATION OF FOLIO 1339:

Crime "by order", mainly in the case of homicide, corresponds to a treacherous, false, coward behavior. The Defendant's attitude, both before and after the act, does not help us trust him in being able to behave correctly in society. Therefore, the suspension of the penalty is not allowed in this case.



Decision

The Panel of Justices of the 5th Section with criminal jurisdiction of the Supreme Court decides:

- To accept the appeal lodged by the Public Prosecutor and to revoke the 1st instance decision.
- To sentence **Manuel Albert Soares** as mediate perpetrator in the attempted form of a crime of aggravated homicide contrary to the joint provisions of sections 22 (1) (2) c), 23, 26, 131 and 132 (1), all of the (Portuguese) Criminal Code; and
- To impose a custodial penalty of 4 (four) years and 6 (six) months.
- The offender is sentenced to pay a legal tax of 4 € (four Euros).

Lisbon, 16 October 2008

(5 signatures)

Em B

PORTUGUESE CRIMINAL CODE

Article 22

Attempt

1 - There is attempt when the offender performs acts of execution of a criminal offence that he has decided to commit, though he fails to complete it.

2 - Execution acts are:

- a) Those acts which fulfil a constituent element of a type of criminal offence;
- b) Those acts suitable to produce a typical result; or
- c) Those acts that, according to the common experience and with the exception of unpredictable circumstances, are deemed to be followed by acts of the types referred to in the preceding subparagraphs.

Article 23

Punishment of the attempt

1 - Unless a provision states otherwise, the attempt is punishable only if to the respective completed criminal offence corresponds imprisonment for a term over three years.

2 - The attempt is punishable with the penalty applicable to the completed criminal offence, specially mitigated.

3 - The attempt is not punishable when it is clear that the means used by the offender is inadequate or that the instrumentality essential for the completion of the criminal offence does not exist.

Article 26

Perpetration

Whoever commits the act, by himself or through another, or takes direct part in its execution, in agreement or together with one or more persons, as well as whoever intentionally induces another to commit an act is punishable as perpetrator, provided there is execution or commencement of execution.

Ex D
B

Article 131

Murder

Whoever kills another person is punished with sentence of imprisonment from eight to sixteen years.

Article 132

Aggravated murder

1 – If death occurs in circumstances which reveal special censurability or perversity, the offender is punished with a sentence of imprisonment from twelve to twenty five years.

2 – It is likely to reveal the special censurability or perversity which the preceding paragraph refers to, amongst others, the circumstance that the offender:

- a) Is a descendant or ascendant, adopted or adopting person, of the victim;
- b) Commits the act against spouse, ex-spouse, person of the same or a different gender with whom the offender maintains or has maintained a civil partnership, even if without cohabitation, or against a common descendant's parent in first degree;
- c) Commits the act against a particularly helpless person due to age, handicap, disease or pregnancy;
- d) Employs torture or a cruel act to increase the suffering of the victim;
- e) Is determined by greediness, by the pleasure of killing or of causing suffering, for excitement or satisfaction of the sexual instinct or by any ignoble or vain reason;
- f) Is determined by racial, religious or political hatred, or by hate generated by colour, ethnical or national origin, by sex or by the sexual orientation of the victim;
- g) Aims at preparing, facilitating, executing or concealing another criminal offence, facilitating the escape or ensuring the impunity of an offender;
- h) Commits the act together with, at least, two more persons, or uses a particularly dangerous mean or a mean resulting into the commission of common danger criminal offences;
 - i) Uses poison or any other insidious mean;
 - j) Acts with malice, with consideration of the means employed or has persisted in the intention to kill for more than twenty four hours;
 - l) Commits the act against a member of a sovereignty body, of the Council of State, Representative of the Republic, magistrate, member of a governmental body of the Autonomous Regions, Ombudsman, civil governor, member of a body of the local authorities or of service or body with public authority, commander of public force, juror, witness, attorney, all persons performing duties

within the scope of procedures for extrajudicial settlement of disputes, member of the security forces or services, public, civil or military officer, law enforcement officer or citizen entrusted with a public service, teacher, examiner or member of school community or minister of religious cult, judge or sports referee under the jurisdiction of the sportive federations, in the performance of their duties or by virtue of the same;

m) Is an officer and commits the act with serious abuse of authority.

Declaro, sob compromisso de honra, que a retroversão supra é fiel ao original redigido em língua portuguesa, pela qual assumo completa e inteira responsabilidade

Lisboa, 16 de Setembro de 2009


Maria Con